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20 UNITED STATES DISTRICT COURT

21 DISTRICT OF NEVADA

22 MATTHEW R. LINDNER, individually; as) CASE NO.: 2:10-cv-00051-LDG-VCF
surviving spouse and legal heir of ELSY LETICIA)
23 GRANADOS-MARTINEZ, deceased; as)
surviving parent and legal heir of CAMILA)
24 LYNETE LINDNER, a deceased minor; and as)
Guardian Ad Litem of PAULINA GRANADOS-)
25 MARTINEZ, a minor; FERNANDO)
26 GRANADOS-MAGALLON, individually and as)
surviving spouse and legal heir of REFUGIO)
27 LETICIA MARTINEZ COSIO,)
28 Plaintiffs,)

1)
 2 vs.)
 3)
 4 FORD MOTOR COMPANY, a Delaware)
 5 corporation; BERTHA MEZA d/b/a OROZCO)
 6 AUTO SALES; EVENFLO COMPANY, INC., a)
 7 Delaware corporation; BIG LOTS STORES, INC.,)
 8 an Ohio corporation; DOES I through XX,)
 9 inclusive and ROE BUSINESS ENTITIES I)
 10 through XX, inclusive,)
 11)
 12 Defendants.)
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**PLAINTIFF'S OPPOSITION TO DEFENDANT EVENFLO COMPANY, INC.'s MOTION
 IN LIMINE TO EXCLUDE ATTORNEY COURTROOM DEMONSTRATIONS
 ("PARLOR TRICKS") [Motion No. 13]**

Plaintiff MATTEW R. LINDNER, Individually and as surviving spouse and legal heir of ELSY LETICIA GRANADOS-MARTINEZ, deceased; and as surviving parent and legal heir of CAMILA LYNETTE LINDNER, a deceased minor, through his attorneys, Joseph L. Benson, II of BENSON & BINGHAM, Larry W. Lawrence, Jr. of THE LAWRENCE LAW FIRM, and Ricardo A. Garcia of GARCIA, OCHOA MASK, LLP, hereby submits his Opposition to EVENFLO MOTOR COMPANY, INC.'s Motion in Limine to Exclude Attorney Courtroom Demonstrations ("Parlor Tricks") [Motion No. 13]. This opposition is made and based upon the Memorandum of Points and Authorities that follow below, the papers and pleadings on file herein, and any oral argument entertained by the Court.

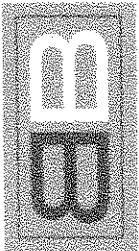
DATED this ____ day of June, 2015.

BENSON & BINGHAM

/s/ Joseph L. Benson II
 JOSEPH L. BENSON II, ESQ.
 Nevada Bar No. 7276

Attorneys for Plaintiffs

BENSON & BINGHAM
 ATTORNEYS AT LAW



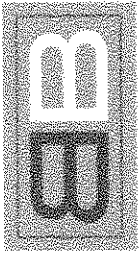
MEMORANDUM OF POINTS AND AUTHORITIES

I.

So called "parlor tricks" are visual demonstrations that depend on circumstances that cannot be shown to have been possible in real world situations. It is a term borrowed from the National Highway Traffic Safety Administration to describe testing that does not simulate real world conditions possible in actual accidents. *See e.g. GMC v. Porritt*, 891 So. 2d 1056, 1058, (Fla. App. 2004). Plaintiffs are not offering any "parlor tricks." Rather, every demonstration that Plaintiffs' witnesses perform for the jury will be under circumstances that can easily be demonstrated to fall within the realm of possible forces occurring in a real world rollover accident.

As with the evidence of other similar incidents, a ruling on evidence of courtroom demonstrations would be premature at the *in limine* stage. Such evidence certainly is admissible when the demonstration can be shown to be similar to the facts at issue, such that the jury will not be misled by the demonstration. *Evenflo* cites the Nevada Supreme Court's opinion in *Way v. Hayes*, 89 Nev. 375, 513 P.2d 1222 (1973), which upheld a trial court's discretion in excluding a courtroom demonstration that was substantially dissimilar from the facts at issue. However, the Nevada Supreme Court has since distinguished *Way* in its opinion in *McCourt v. J. C. Penney Co.*, 103 Nev. 101, 103, 734 P.2d 696, 698 (Nev. 1987), holding it was an abuse of discretion to *exclude* courtroom demonstrations were they could be shown to be similar to the case in controversy. The *McCourt* court wrote: "where the facts are sharply disputed and the matter is tried to the jury, and there is a proper foundation shown, the court should allow the evidence."

All of the courtroom demonstrations Plaintiffs intend to offer can easily be shown to be similar to the circumstances that would be reasonable and possible in a rollover accident like the one at issue and that the jury could reasonably infer *did* occur in this incident as the Ninth Circuit has already explained in its opinion reversing a prior summary judgment in this case. Any minor



1 differences can be explored during cross-examination and explained to the jury to avoid any
2 nominal possibility of confusion.

3 II.

4 Evenflo's motion in limine should be denied as a pretrial matter. Plaintiffs will prove an
5 adequate foundation for admissibility similar incidents and customer reports during trial.
6

7 DATED this 26th day of June, 2015.

8 BENSON & BINGHAM

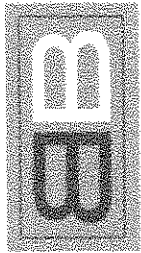
9 /s/ Joseph L. Benson II

10 JOSEPH L. BENSON II, ESQ.

11 Nevada Bar No. 7276

12 Attorneys for Plaintiffs
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BENSON & BINGHAM
ATTORNEYS AT LAW



CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **PLAINTIFF'S OPPOSITION TO
EVENFLO MOTOR COMPANY, INC.'S MOTION IN LIMINE TO EXCLUDE
ATTORNEY COURTROOM DEMONSTRATIONS ("PARLOR TRICKS") [MOTION NO.
13]** was made this date by electronic service to the following:

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DATED this 26 day of June, 2015.


An employee of BENSON & BINGHAM

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